

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED AMENDMENT

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUEPART 110
PROPERTY TAX CODE

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AUTHORITY: Implementing the Property Tax Code [35 ILCS 200] and authorized by Section

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2505-625 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-625].

SOURCE: Adopted June 1, 1940; amended at 5 Ill. Reg. 2999, effective March 11, 1981; amended at 5 Ill. Reg. 5888, effective May 26, 1981; amended at 6 Ill. Reg. 9707, effective July 27, 1982; amended at 6 Ill. Reg. 14564, effective November 5, 1982; codified at 7 Ill. Reg. 5886; amended at 8 Ill. Reg. 24285, effective December 5, 1984; amended at 9 Ill. Reg. 159, effective December 26, 1984; amended at 9 Ill. Reg. 12022, effective July 24, 1985; amended at 10 Ill. Reg. 11284, effective June 16, 1986; amended at 10 Ill. Reg. 15125, effective September 2, 1986; amended at 11 Ill. Reg. 19675, effective November 23, 1987; amended at 11 Ill. Reg. 20972, effective December 11, 1987; amended at 12 Ill. Reg. 14346, effective August 29, 1988; amended at 13 Ill. Reg. 6803, effective April 12, 1989; amended at 13 Ill. Reg. 7469, effective May 2, 1989; amended at 15 Ill. Reg. 3522, effective February 21, 1991; emergency rule added at 15 Ill. Reg. 14297, effective October 1, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 2624, effective February 4, 1992; emergency amendment at 17 Ill. Reg. 22584, effective January 1, 1994, for a maximum of 150 days; emergency expired May 30, 1994; amended at 18 Ill. Reg. 15618, effective October 11, 1994; emergency amendment at 19 Ill. Reg. 2476, effective February 17, 1995, for a maximum of 150 days; emergency expired July 16, 1995; emergency amendment at 19 Ill. Reg. 3555, effective March 1, 1995, for a maximum of 150 days; emergency expired July 28, 1995; emergency amendment at 20 Ill. Reg. 7540, effective May 21, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 13611, effective October 3, 1996; amended at 20 Ill. Reg. 13993, effective October 3, 1996; emergency amendment at 20 Ill. Reg. 15613, effective November 22, 1996, for a maximum of 150 days; emergency expired on April 21, 1997; amended at 21 Ill. Reg. 6921, effective May 22, 1997; emergency amendment at 23 Ill. Reg. 9909, effective August 2, 1999, for a maximum of 150 days; emergency expired December 29, 1999; amended at 23 Ill. Reg. 14759, effective December 8, 1999; amended at 24 Ill. Reg. 2428, effective January 25, 2000; amended at 25 Ill. Reg. 191, effective December 26, 2000; amended at 25 Ill. Reg. 6396, effective May 1, 2001; amended at 26 Ill. Reg. 3727, effective February 26, 2002; emergency amendment at 27 Ill. Reg. 17094, effective October 24, 2003, for a maximum of 150 days; amended at 28 Ill. Reg. 1395, effective January 9, 2004; amended at 28 Ill. Reg. 2257, effective January 22, 2004; emergency amendment at 28 Ill. Reg. 9690, effective June 28, 2004, for a maximum of 150 days; amended at 28 Ill. Reg. 14662, effective October 19, 2004; amended at 28 Ill. Reg. 15599, effective November 17, 2004; amended at 31 Ill. Reg. 12994, effective August 21, 2007; amended at 32 Ill. Reg. 13253, effective July 28, 2008; amended at 34 Ill. Reg. _____, effective _____.

Section 110.116 Charitable Exemption Eligibility: Low Income Housing Projects

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- a) The legislature has expressly determined that property otherwise qualifying for an exemption under the charitable exemption section of the Illinois property tax code shall not lose its exemption because the legal title is held:
- 1) by an entity that is organized solely to hold that title and that qualifies under paragraph (2) of section 501(c) of the Internal Revenue Code or its successor, whether or not that entity receives rent from the charitable organization for the repair and maintenance of the property;
 - 2) by an entity that is organized as a partnership or limited liability company, in which the charitable organization, or an affiliate or subsidiary of the charitable organization, is a general partner of the partnership or managing member of the limited liability company, for the purposes of owning and operating a residential rental property that has received an allocation of Low Income Housing Tax Credits for 100% of the dwelling units under section 42 of the Internal Revenue Code of 1986 as amended; or
 - 3) for any assessment year including and subsequent to January 1, 1996 for which an application for exemption has been filed and a decision on which has not become final and nonappealable, by a limited liability company organized under the Limited Liability Company Act provided that:
 - A) the limited liability company's sole member or members, as that term is used in Section 1-5 of the Limited Liability Company Act, are the institutions of public charity that actually and exclusively use the property for charitable and beneficent purposes;
 - B) the limited liability company is a disregarded entity for federal and Illinois income tax purposes and, as a result, the limited liability company is deemed exempt from income tax liability by virtue of the Internal Revenue Code section 501(c)(3) status of its sole member or members; and
 - C) the limited liability company does not lease the property or otherwise use it with a view to profit. [35 ILCS 15-65]
- b) The Illinois Supreme Court has held that charitable property tax exemptions are constitutional as well as statutory and must comply with court determinations

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setting out factors that must be satisfied in order for the exemption to be granted. The exemption requires both charitable ownership and charitable use of the property.

c) The Requirement of Charitable Ownership

A Low Income Housing Project (Project) owned by a partnership or limited liability company and financed with an allocation of federal Low Income Housing Tax Credits (Tax Credits) pursuant to section 42 of the Internal Revenue Code of 1986, as amended (Code section 42), will satisfy the charitable ownership requirement for exemption and any for-profit entity's involvement to acquire Tax Credits as a limited partner or limited liability company member (LLC Member) shall be viewed as a financing mechanism in that the limited partner or LLC Member does not have the usual indicia of ownership when the following requirements are satisfied:

- 1) The general partner of the partnership or managing member of the limited liability company shall be a charitable organization, or a wholly-owned or controlled affiliate or subsidiary of the charitable organization. The charitable organization must qualify as a charitable organization under Illinois law as established by statute and the relevant guidelines created by the Illinois Supreme Court.
- 2) The project must have an extended low-income housing commitment in accordance with Code section 42(h)(6) (Extended Use Agreement) co-signed by an authorized tax credit allocating agency. The Extended Use Agreement must be recorded against the property. The Extended Use Agreement and/or other written agreements with federal, State, or local government agencies, municipalities, or other charitable organizations at a minimum must evidence the following:
 - A) 100% of the residential rental units in the Project are subject to and operated in accordance with the requirements of Code section 42; and
 - B) the targeted underserved populations in need of housing that will be served by the Project; and

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- C) the support services to be provided by the charitable organization to the target populations and/or the projected operating support to be provided by the charitable organization for the Project.
- d) Requirements of the General Partner or Managing Member
- 1) The general partner of the partnership or managing member of the limited liability company shall manage and control the day-to-day operations of the Project, and shall have the exclusive rights to select Project tenants, determine (in consultation with the charitable organization or a third-party service provider) whether and to what extent supportive services may be offered to a tenant, and whether a tenant has fulfilled the terms of his or her tenancy, including whether the tenant has fulfilled the Non-Eviction Policy requirements (as defined in subsection (f)(1)). The general partner or managing member shall also select and supervise the property manager for the Project.
- 2) The partnership or limited liability company shall grant and execute, with the for-profit entity's written consent, a right of first refusal in favor of the charitable organization or the general partner or managing member to purchase and acquire the Project on terms no less favorable than required by Code section 42(j)(7), or such other terms as may be required by federal statute, regulation or directive.
- e) Limitations on the Investors
The investors, whether a limited partner of a partnership or LLC Member (the Investors), may not receive any profit or monetary benefit from the sale or operations of the Project other than the Tax Credits, tax losses incurred or received by the partnership or limited liability company relating to the Project. Provided that all other current debts and obligations of the partnership or limited liability company have been paid and operating reserves for the Project are fully funded, some additional benefits to the Investors may be permitted provided that they are De Minimus and consistent with Code section 42.
- f) The Requirement of Charitable Use
In addition to satisfying the charitable ownership requirement, the Project must also be charitably used. A Project shall be considered in exempt charitable use if the following factors are satisfied:

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- 1) The partnership or limited liability company must adopt and maintain a policy not to evict a tenant for non-payment of rent or other residency fees or charges if:
 - A) the non-payment is due solely to the tenant's financial inability to pay the Project's rent, fees or charges,
 - B) the tenant has documented his or her financial inability to pay in accordance with the charitable organization's policies and procedures (the Non-Eviction Policy);
 - C) the partnership or limited liability company must publish and communicate in writing its Non-Eviction Policy to the Project's tenants;
 - D) the partnership or limited liability company must not evict a tenant for his or her documented inability to pay rent in violation of the Non-Eviction Policy; and
- 2) The partnership or limited liability company shall document charitable support, whether financial or in-kind, that it will provide to the Project or the Project's tenants.
 - A) Charitable support in the form of support services must be sufficient to address the needs of the Project's target populations and may include but is not limited to: vocational training; lifestyle counseling; health screenings and referrals; recreational activities for elderly persons; providing access to alcohol or drug counseling or other counseling services; social skills and functional literacy training; and educational opportunities.
 - B) Charitable support in the forms of operating deficit and related guaranty obligations from the general partner, managing member or charitable organization controlling the general partner or managing member for the Project, or operating subsidies actually provided or projected to be provided by general partner, managing member or charitable organization controlling the general partner or managing member shall be documented.

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3) The partnership agreement or operating agreement shall provide that in the event of a conflict between the obligations of the charitable organization (in its capacity as general partner or managing member) to operate the partnership or limited liability company in furtherance of the charitable organization's tax exempt purposes, and any duty it may have to maximize profits of the partnership or limited liability company for the investor, the charitable purposes of the charitable organization shall control.

g) Affidavit of Compliance

The partnership or limited liability company shall include in addition to the usual requirements a certification in its annual Affidavit of Use submitted to the chief county assessment officer that the partnership or limited liability company, as applicable, is in compliance with the provisions of the Extended Use Agreement and has not received an Internal Revenue Service Form 8823 (or successor IRS form) from the Allocating Agency for non-compliance in the previous year that it failed to cure timely to the Allocating Agency's satisfaction. The counties shall have the authority to create and require their own annual Affidavits of Use and request additional information as needed to verify compliance with the statute and this Section.

(Source: Added at 34 Ill. Reg. _____, effective _____)